

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and STATES
of the UNITED STATES, ex rel. PATRICK
DONOHUE,

Plaintiff-Relator,

- against -

RICHARD CARRANZA, in his official capacity
as the former Chancellor of New York City
Department of Education, et al.,

Defendants.

Case No. 1:20-CV-5396 (GHW) (SDA)

**DECLARATION OF
JOSEPH V. WILLEY**

I, JOSEPH V. WILLEY, pursuant to 28 U.S.C. § 1746, hereby declares, under penalty of perjury, as follows:

1. I am a member of the law firm Katten Muchin Rosenman LLP, attorneys for Defendants New York City Department of Education and Richard Carranza and Meisha Porter, in their official capacities as former Chancellors of the New York City Department of Education (collectively, “NYC DOE”), the Board of Education of the City of Chicago and Jose M. Torres, PHD, in his official capacity as former Superintendent of the Board of Education of the City of Chicago (collectively, “Chicago BOE”), and the Los Angeles Unified School District and Austin Beutner, in his official capacity as former Superintendent of the Los Angeles Unified School District (collectively, “LAUSD”) (together, the “School Districts”). I submit this declaration in support of the School Districts’ Motion to Dismiss Relator Patrick Donohue’s Second Amended Complaint.

2. As set forth in paragraphs 4-13 below, attached as exhibits are true and correct copies of guidance issued by federal and applicable state education agencies regarding how to comply with the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, *et seq.*, during the COVID-19 pandemic.

3. As set forth in paragraphs 14-18 below, attached as exhibits are true and correct copies of guidance issued by federal and applicable state Medicaid agencies regarding the modification of Medicaid billing requirements to permit reimbursement for telehealth services during the COVID-19 pandemic.

4. Attached hereto as **Exhibit A** is a true and correct copy of: U.S. DEP'T EDUC., QUESTIONS AND ANSWERS ON PROVIDING SERVICES TO CHILDREN WITH DISABILITIES DURING THE CORONAVIRUS DISEASE 2019 OUTBREAK (March 2020), available at: sites.ed.gov/idea/files/qa-covid-19-03-12-2020.pdf.

5. Attached hereto as **Exhibit B** is a true and correct copy of: OFF. SPECIAL EDUC. REHAB. SERVS., U.S. DEP'T EDUC., SUPPLEMENTAL FACT SHEET: ADDRESSING THE RISK OF COVID-19 IN PRESCHOOL, ELEMENTARY AND SECONDARY SCHOOLS WHILE SERVING CHILDREN WITH DISABILITIES (March 21, 2020), available at: www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf.

6. Attached hereto as **Exhibit C** is a true and correct copy of: OFF. SPECIAL EDUC. PROGRAMS, U.S. DEP'T EDUC., OSEP QA 20-01: IDEA PART B SERVICE PROVISION (Sept. 28, 2020), available at: sites.ed.gov/idea/files/qa-provision-of-services-idea-part-b-09-28-2020.pdf.

7. Attached hereto as **Exhibit D** is a true and correct copy of: N.Y. EDUC. DEP'T, PROVISION OF SERVICES TO STUDENTS WITH DISABILITIES DURING STATEWIDE SCHOOL CLOSURES DUE TO NOVEL CORONAVIRUS (COVID-19) OUTBREAK IN NEW YORK STATE & TOPIC QUESTIONS AND ANSWERS (Mar. 27, 2020), available at:

www.p12.nysed.gov/specialed/publications/2020-memos/nysed-covid-19-provision-of-services-to-swd-during-statewide-school-closure-3-27-20.pdf.

8. Attached hereto as **Exhibit E** is a true and correct copy of: ILL. BD. EDUC., FREQUENTLY ASKED QUESTIONS FOR SPECIAL EDUCATION DURING REMOTE LEARNING (Apr. 20, 2020), available at:

www.isbe.net/Documents/SPED-FAQ-04-20-20.pdf.

9. Attached hereto as **Exhibit F** is a true and correct copy of: CA. DEP'T EDUC., SPECIAL EDUCATION GUIDANCE FOR COVID-19 (April 9, 2020), available at:

www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp.

10. Attached hereto as **Exhibit G** is a true and correct copy of: N.Y. EDUC. DEP'T, SUPPLEMENT #1 – PROVISION OF SERVICES TO STUDENTS WITH DISABILITIES DURING STATEWIDE SCHOOL CLOSURES DUE TO NOVEL CORONAVIRUS (COVID-19) OUTBREAK IN NEW YORK STATE – ADDITIONAL QUESTIONS AND ANSWERS (Apr. 27, 2020), available at:

www.p12.nysed.gov/specialed/publications/2020-memos/special-education-supplement-1-covid-qa-memo-4-27-2020.pdf.

11. Attached hereto as **Exhibit H** is a true and correct copy of: OFF. SPECIAL EDUC., N.Y. DEP'T EDUC., SUPPLEMENT #3 – PROVISION OF SERVICES TO STUDENTS WITH DISABILITIES DURING STATEWIDE SCHOOL CLOSURES DUE TO NOVEL CORONAVIRUS (COVID-19) OUTBREAK IN NEW YORK STATE (June 20, 2020), available at:

www.p12.nysed.gov/specialed/publications/2020-memos/special-education-supplement-3-covid-qa-memo-6-20-2020.pdf.

12. Attached hereto as **Exhibit I** is a true and correct copy of: ILL. BD. EDUC., FALL 2020 LEARNING RECOMMENDATIONS (July 23, 2020), available at:

www.isbe.net/Documents/Fall-2020-Learning-Rec.pdf.

13. Attached hereto as **Exhibit J** is a true and correct copy of: CA. DEP'T EDUC., DISTANCE LEARNING FREQUENTLY ASKED QUESTIONS ABOUT DISTANCE LEARNING FOR THE 2020-21 SCHOOL YEAR PURSUANT TO EDUCATION CODE 43500-43511 (Aug. 21, 2020), available at:

www.cde.ca.gov/ci/cr/dl/distlearningfaqs.asp.

14. Attached hereto as **Exhibit K** is a true and correct copy of: CTR. MEDICARE & MEDICAID SERVS., STATE MEDICAID & CHIP TELEHEALTH TOOLKIT: POLICY CONSIDERATIONS FOR STATES EXPANDING USE OF TELEHEALTH, COVID-19 VERSION 3, available at:

www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit.pdf.

15. Attached hereto as **Exhibit L** is a true and correct copy of: N.Y. DEP'T HEALTH, MEDICAID IN EDUCATION ALERT, ISSUE # 20-02 (April 2, 2020), available at:

www.oms.nysed.gov//medicaid/medicaid_alerts/alerts_2020/20_02.html.

16. Attached hereto as **Exhibit M** is a true and correct copy of: ILL. DEP'T HEALTHCARE FAMILY SERVS., FAQs FOR ILLINOIS MEDICAID VIRTUAL HEALTHCARE EXPANSION/TELEHEALTH EMERGENCY RULES (May 19, 2020), available at:

www.illinois.gov/hfs/SiteCollectionDocuments/051920TelehealthRulesChangeFAQSRevisedFinal.pdf.

17. Attached hereto as **Exhibit N** is a true and correct copy of: CA. DEP'T HEALTH CARE SERVS., PPL. NO. 20-014R: LOCAL EDUCATIONAL AGENCY MEDI-CAL BILLING OPTION PROGRAM (LEA BOP) TELEHEALTH POLICY RELATED TO THE CORONAVIRUS DISEASE 2019 (COVID-19) (Sept. 15, 2020), available at:

www.dhcs.ca.gov/formsandpubs/Documents/ACLSS%20PPLs/2020/PPL20-014RTelehealth.pdf.

18. Attached hereto as **Exhibit O** is a true and correct copy of: N.Y. DEP'T HEALTH, MEDICAID IN EDUCATION ALERT, ISSUE # 20-02: ADDENDUM (June 5, 2020), available at: www.oms.nysed.gov/medicaid/medicaid_alerts/alerts_2020/20_02_Addendum.html.

Dated: New York, New York
June 30, 2022

KATTEN MUCHIN ROSENMAN LLP

By: /s/ Joseph V. Willey

HON. SYLVIA O. HINDS-RADIX
CORPORATION COUNSEL OF THE
CITY OF NEW YORK

By: Stephen Kitzing
Assistant Corporation Counsel
100 Church Street
New York, New York 10009
(212) 356-2087 (phone)
SKitzing@law.nyc.gov

Joseph V. Willey
Alessandra Denis

50 Rockefeller Plaza
New York, New York 10020
(212) 940-8800 (phone)
(212) 940-8776 (fax)
joseph.willey@katten.com
alessandra.denis@katten.com

*Attorneys for Defendants
New York City Department of Education,
and Richard Carranza and Meisha Porter,
in their official capacities as former
Chancellors of the New York City
Department Education*

*Attorneys for Defendants
New York City Department of Education and its
former Chancellors in their official capacities,
Richard Carranza and Meisha Porter; Board of
Education of the City of Chicago and its former
Superintendent in his official capacity, Jose M.
Torres, PhD; and Los Angeles Unified School
District and its former Superintendent in his official
capacity, Austin Beutner*